

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Washington, D.C.

In the Matter of:

KEVIN JOHNSON,

Respondent.

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DOCKET NO.: 12-3889-DB(S)

**ORDER DISMISSING RESPONDENT'S REQUEST FOR A HEARING AND
CONTINUING HIS SUSPENSION**

Introduction and Background

By Notice of Suspension (Notice) dated June 18, 2012, the Department of Housing and Urban Development (HUD) advised Respondent KEVIN JOHNSON of his immediate suspension from participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government, in accordance with 2 C.F.R. parts 180 and 2424. Respondent was advised that his suspension was based on an indictment filed in Lewis County Circuit Court in Tennessee charging him with defrauding HUD and forging contracts that provided housing and homeless services for veterans. Respondent further was advised that the indictment constituted adequate evidence on which to base his suspension under 2 C.F.R. §§180.700 and 180.705.

Also, in the June 18, 2012 Notice, Respondent was advised of my determination that his immediate suspension was necessary to protect the public interest. Additionally, Respondent was advised that in his position as Executive Director of Veterans Service Center of America, he had participated in covered transactions and was thereby subject to the suspension and debarment regulations.

Pursuant to the Notice, which informed Respondent of his right to contest the suspension, Respondent, by letter dated July 3, 2012, informed me of his "desire to contest this suspension in person and in an informal session." Respondent also indicated in his letter that a "second packet containing written argument and supporting attachments is forthcoming."

By Order dated August 15, 2012, the Suspending Official's Designee issued an Order Setting Hearing Date and Submission Deadline. The August 15 Order was returned by the USPS with the notation "UNCLAIMED." Subsequently, a second Order was issued on October 2, 2012. The latter Order set a new hearing date of October 30, 2012, along with a deadline of October 23, 2012, for receipt of Respondent's submission. This Order was received and signed for on behalf of Respondent on October 4, 2012, as evidenced by the USPS return receipt. The Order also was emailed to Respondent at johnsksr@hotmail.com.

As a result of the closure of Government offices on October 30, 2012, occasioned by the inclement weather wrought by the storm "Sandy," the October 30, 2012, hearing could not be held as scheduled. Respondent was contacted via phone by this office in an attempt to reschedule the hearing. Respondent advised the paralegal who spoke with him that he was awaiting information from the state of Tennessee that he would use in his defense. Because Respondent did not identify what information he was expecting from the state of Tennessee, he specifically was advised in a November 6, 2012, email from the paralegal in this office that the Debarring Official's Designee "will require an email from you within two days from today [i.e., November 6, 2012] stating the information that you expect from the state. Based on your response, you will be given a new hearing date. Failure to respond in a timely manner may result in dismissal of your request for a hearing. Please note that you have not submitted any documents in response to the two Orders issued..., nor did you indicate timely your inability to submit information as requested in the two Orders." As of this writing, Respondent has failed to respond to the November 6, 2012 email, nor has he submitted a "packet containing written argument and supporting attachments" as he indicated in his July 3, 2012, letter referenced above.

Discussion

Pursuant to 2 C.F.R. § 180.700, "the suspending official may impose suspension only when the official determines that (a) there exists an indictment for, or other adequate evidence to suspect, an offense listed under §180.800 (a)." Two of the offenses listed under 2 C.F.R. § 180.800 (a) for which a person may be excluded are fraud and forgery. In the instant matter, as indicated above, Respondent was indicted for defrauding HUD and forging contracts. Accordingly, Respondent's suspension is warranted. See 2 C.F.R. § 180.705 (b) ("An indictment... constitutes adequate evidence for purpose of suspension actions.") The regulation at 2 C.F.R. § 180.705 (a) also provides that in "determining the adequacy of the evidence in support of the suspension, the suspending official considers how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result." *Cf* 2 C.F.R. § 180.735 (a) "You... will not have an additional opportunity to challenge the facts if the suspending official determines that (1) your suspension is based upon an indictment."

As noted above, Respondent provided no information; thus, there is nothing before me to consider favorably in support of Respondent's appeal of his suspension. See 2 C.F. R. § 180.730 (a)(1) (Respondent's submission... must identify specific facts that contradict statements contained in the Notice of Suspension") Moreover, notwithstanding the liberal grant of time given Respondent to perfect his appeal, or at the very least to make a show of interest in prosecuting his appeal, Respondent has failed to act timely. This dilatoriness persuades me that Respondent lacks the necessary interest in participating in the proceedings in this matter.

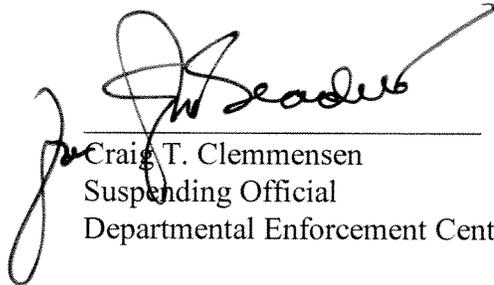
Accordingly, for all the foregoing reasons, it is ORDERED that Respondent's appeal of his suspension and request for a hearing be DISMISSED; and it is further

ORDERED that Respondent's suspension continue "until the conclusion of [legal or debarment] proceedings." 2 C.F.R. § 180.760 (a).

Respondent's suspension "is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulations (48 C.F.R. chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

Dated: _____

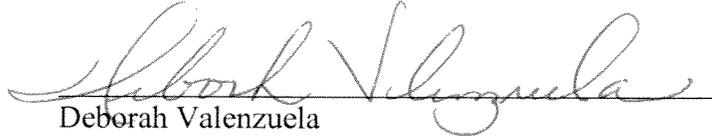
11/21/12



Craig T. Clemmensen
Suspending Official
Departmental Enforcement Center

CERTIFICATE OF SERVICE

I hereby certify that on this 21ST day of November, 2012, a true copy of the ORDER DISMISSING RESPONDENT'S REQUEST FOR A HEARING AND CONTINUING HIS SUSPENSION was served in the manner indicated.



Deborah Valenzuela
Debarment Docket Clerk
Departmental Enforcement Center-Operations

HAND-CARRIED

Mortimer F. Coward, Esq.
Debarring Official's Designee

Joseph J. Kim, Esq.
Ana I. Fabregas, Esq.
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CERTIFIED MAIL and EMAIL

Kevin Johnson

